

SEXUAL ASSAULT OF AN ADIVASI  
WOMAN BY ORISSA SECURITY  
PERSONNEL IN GAJAPATI DISTRICT



A FACT FINDING REPORT BY  
**WOMEN AGAINST SEXUAL VIOLENCE AND STATE REPRESSION (WSS)**  
JANUARY, 2011

Sexual Assault of an Adivasi Woman by Orissa  
Security Personnel in Gajapati district

A Fact Finding Report by Women Against Sexual  
Violence and State Repression (WSS)

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*Women against Sexual Violence and State Repression (WSS) is a non funded effort started in November 2009, to put an end to the violence being perpetrated upon our bodies and societies. We are a nationwide network of women from diverse political and social movements comprising of women's organizations, mass organizations, civil liberty organizations, student and youth organizations, mass movements and individuals. We unequivocally condemn state repression and sexual violence on our women and girls by any perpetrator(s).*

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# SEXUAL ASSAULT OF AN ADIVASI WOMAN BY ORISSA SECURITY PERSONNEL IN GAJAPATI DISTRICT

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State Repression (WSS)

## BACKGROUND

Sexual violence against women has become a regular feature in the context of sustained and unchecked state repression across all states in India today. Areas of the North East and Kashmir where the Indian army has been deployed for several decades, have witnessed numerous instances of custodial rape, sexual violence, indiscriminate arrests, torture and killings. In the rape and murder cases of Manorama in Manipur, and Nilofer and Asiya Jan at Shopian, justice has been mocked in spite of remarkable mass movements. Mass protests against sexual violence during police raids have led to severe backlash. Even fact finding groups of women seeking to investigate these incidents have not been spared.

In the Adivasi inhabited areas of Chhattisgarh, Madhya Pradesh, Jharkhand, Orissa, West Bengal, Andhra Pradesh and Maharashtra, the offensive launched by the Government of India in the name of curbing 'Maoism' and ushering in 'development' has also been accompanied by rampant sexual violence by armed forces as well as by other state-protected vigilante groups and private armies. In addition to encounter killings and arbitrary arrests of activists, sexual violence against women has become integrated into combing operations of state forces in these areas.

Armed offensive has proven to be no solution to any situation of unrest. Although the use of force for more than half a century has not brought peace or development to the people of Kashmir or the North East, the state continues to justify its armed offensives including Op-

eration Green Hunt in Adivasi areas as a way of "restoring democracy." Sexually assaulted women on the other hand, are denied their democratic right to even lodge complaints against the state forces and/or other perpetrators.

Extra juridical violence of the state continues to be supported by draconian laws such as AFSPA, Disturbed Areas Act (DSA), Chhattisgarh Special Public Security Act (CSPSA), Unlawful Activities Prevention Act (UAPA), National Security Act (NSA) and National Investigative Agency Act (NIA). These laws have vested enormous and arbitrary power with the police and the military, with the impunity to jail, torture and kill and suppress the peoples' resistance against land acquisition and privatization of other resources as seen in the Operation Green Hunt areas. While the armed offensives are ostensibly presented as combating insurgency and/or left-wing extremism the state is actually facilitating mining and other corporate grab of land and other resources. A "cleanse" of the indigenous populations of the area is also part of the state agenda in some states. Women, who have been at the forefront of democratic movements in these areas, have borne the brunt of the violence and even youth have not been spared.

In August 2010, we were informed that a young adivasi girl had been arrested from a village in Gajapati district on the grounds of being involved in naxalite activities. She had been allegedly raped by the security forces on the way to the police station, and no report had still been filed on that. Given the continuous combing operations in Chhattisgarh, Jharkhand and Orissa and especially in the southern parts of Orissa, we felt there was a dire need to investigate.

News of women being subjected to sexual assault with the advent of Operation Green Hunt that commenced from November 2009 was beginning to come in. However, we need to see this solitary case in Orissa in the context of two developments that WSS is concerned with. Sexual assault against women predates Operation Green Hunt as we have been attempting to document cases of sexual assault in Dantewada district of Chhattisgarh where six women have been fi-

nally able to lodge FIRs. On the other hand, this incident in Gajapati district too seemed to fall in the so called "red corridor" that was targeted as part of deployed paramilitary offensive against Naxalites by the Home Ministry. Nothing seemed new except the concentrated effort of the Home Ministry and the free hand it seems to have given to the police and paramilitary in these regions.

Resistance by adivasi communities has been going strong since many years against the forcible taking over of land, mineral and mining resources that continues to be the mainstay of the people in terms of both habitat and livelihood. The announcing of the Operation Green Hunt gave legitimacy to untold repression in Narayanpatna, Raygada and Niyamagiri. Repression in Jagatsinghpur and Kalinganagar reached new heights in the beginning of 2010 as people gave a tough fight too. Areas close to Andhra Pradesh were being brought under scrutiny over and over again. People's daily lives and movement, livelihood and daily activities have all been disrupted in this purging of Naxalites. The war ensuing in Orissa against the Naxalites is a war against its



people and its resources. Gajapati is one of the most vulnerable districts of this backward state and the incident covered here indicates the extent of repression and daily torture the village people face from the police and paramilitary.

## INTRODUCTION

An allegation of rape of an adivasi woman by security and police forces was brought to the notice of WSS by local activists who had been approached by the survivor's father. The incident is said to have taken place on February 12, 2010 in Gajapati district in Orissa, but local activists came to know about it in August. The arrest and rape of this woman has largely gone unreported, providing impetus for the present investigation. An all-India four-woman fact finding team went to Gajapati district in Orissa on September 30 to October 1 to investigate the alleged rape.

The team met the woman, her parents, people in her village, the local sarpanch, panchayat samiti members, her lawyers, local police personnel, jailer and jail pharmacist. A telephonic interview was conducted with the Superintendent of Police (SP), Gajapati district. The team also looked into relevant news reports. Based on these materials the team arrived at the following understanding of the case.

### ABOUT THE AREA

Gajapati district is one of the southern districts of Orissa. This was a subdivision of Ganjam district until 2<sup>nd</sup> October 1992 when it became recognized as a district. It is surrounded by Raygada, Ganjam and Phulbani district. To its south is the border of Andhra Pradesh. Gajapati district is fairly undeveloped and mountainous. It is largely inhabited by Adivasi people who constitute 51 percent of the population. The terrain is hilly and heavily forested. Of a total forest area of

2351 sq.km, reserve forest is 446 sq. km. Parlakhemundi, on the southern tip, is the district headquarters.

According to news reports, Naxalites (used interchangeably with 'Maoists' in this report) have been active in the district since the 90s. On March 24th 2006, Maoists freed over 40 prisoners lodged in R.Udaygiri jail. They also kidnapped two government officials (who were later released safely) and looted arms from the jail, a local Orissa Special Armed Forces camp and the police station. There have also been reports of a land mine blast that injured 12 Special Operations Group (SOG) personnel on February 16th 2009; calls for boycott of the 2009 Assembly elections; and blowing up of a forest beat office by Maoists on July 11th 2009. Tower blasts and a late night attack on four passenger buses of the Orissa State Road Transport Corporation near Nalaghat in Gajapati district during its Orissa bandh on December 27th 2009 were also reported.

There is heavy deployment of the Central Reserve Police Force (CRPF) and Special Operations Group (SOG) of the State Police in the district. Reports of harassment of innocent villagers by the CRPF and false cases accusing them of 'being associated with the Naxals' are common in the area. In November 2008, in the nearby Panigonda Panchayat the CRPF killed one man and seriously injured another. Four heads of cattle also died in the police firing. As established by the Human Rights Forum, Andhra Pradesh fact finding report, these two men had nothing to do with Maoist activities. After the incident, the local people led by Sarpanches and Samiti members of all the villages protested against the CRPF/Police shooting of innocent villagers. There was a road blockade and other such protest activities demanding compensation for the victims. Instead of taking any measures to address the grievances of the affected people, the police filed several false cases against the local leaders, including the elected representatives in the Gram Panchayats and Panchayat Samitis. There are also reports of extra-judicial killings that have been purportedly done in the name of eliminating Naxals. Journalists have also not



been spared. Laxman Choudhury, a well-known local journalist, working for Sambad, an Oriya daily, was arrested on September 20th 2009 and incarcerated for over two months on trumped-up charges of having connections with Naxals.

Village Jadingi, Gram Panchayat (GP) Katama, Block Mohana is a small village of 29 families, spread over two clusters of houses. All the villagers are Christian Kondh adivasis, who speak the Kui language. As in many of the villages in the area, the houses have a common wall and are built in two rows overlooking each other.

Jadingi is a prime example of the government neglect typical of the entire area. It is located 8 km from the nearest motorable road in GP Katama. The walk itself is a grueling one with most of the route being uphill, making it impossible to get any villager to reach a health-care facility in case of a medical emergency. There is a primary school in village Gotha, which is about 400 metres from here. None of the girls have studied beyond primary school as there are no facilities in the

village. For middle school, some boys stay in the hostel in Katama. There is only one matriculate in the village. The village has one non-functioning tubewell, so people bring drinking water from a spring nearby.

People eat whatever they grow - beans, ragi (millets), paddy etc. However, the produce is enough to meet their requirements only for 6 to 8 months. For the remaining months of the year they depend on casual labour and forest produce. Young men and women from some families go out as migrant workers to distant places like Hyderabad.

## **EVENTS OF FEBRUARY 12 AND 13, 2010**

### **VILLAGE JADINGI: ABOUT 4 AM**

Early in the morning of February 12th, about 40 SOG and police personnel from Adava Police Station, led by S.I., D. Mohapatra reached village Jadingi. Groups of security personnel went to houses, started banging on people's doors, began dragging out the adivasi villagers and beating them.

They were looking for and asking for specific Maoists - 'Sagar' and 'Azad'. They demanded to know the whereabouts of 'Sagar' and insisted that he had come to the village the night before. Many villagers reported being kicked and threatened with guns held at their chests. The members of the force threatened to shoot them if they did not reveal the whereabouts of 'Sagar'. The villagers replied that they did not know of any such person. They also manhandled several people saying: "So you are a Naxalite!"; "Your village has become a Naxal village"; "Why did you join the Naxals?"

The first house the police entered was that of Neelamoni Majhi, who complained of being threatened, dragged out, beaten up and kicked by 6 or 7 police personnel. The second house was that of Kangra Majhi, with whom they behaved the same way.

The next house was that of Dakasa Majhi, the father of the complain-

ant. His 20-year-old daughter was doing her usual morning chore of pounding rice inside the house. Her parents, brother and sister-in-law were asleep in the same room. The force demanded that she open the door. She replied that she would open it after dawn, but they broke open both the front and the back door and forcibly entered. They started beating her and dragged her outside to the verandah, accusing her of mixing with the Naxals. This happened in front of several villagers and family members. When her mother and father protested, they were forced into the adjoining house and were told to stay there, failing which they would be shot.

Lajar Majhi lives just a house away. He is Dakasa Majhi's nephew. He was the next to be dragged out.

Another person called Prasanno Majhi had come to this part of the village at night to watch a film. He said that he was sleeping in the community room, which is one of the first in the row of houses in the village. His own house is in the other hamlet of the village. The security forces insisted that he was 'Sagar'. When he denied this, they said he was lying, and dragged him out too.

They asked another villager, Joseph Majhi to identify 'Sagar' from amongst the people present. They also beat him up, dragged him out, kicked him and searched his house. He replied that he could recognize only those people who were from his area, and that he didn't know about 'Sagar'. He was then asked to identify everybody in the village, by name. They separately asked his sister to do the same.

Martha Majhi wife of Kangra Majhi who lives in the house adjoining Dakasa Majhi's house was also man-handled. The security forces asked her if the woman in question had joined the party (the Maoist). Martha said no; they then asked her to take a vow touching her child's head, she did so, saying that the young woman was her niece, whom she had known all her life. She also told the forces that the woman in question only worked in the village and had not joined the party.

The security forces took the girl, her cousin, Lajar Majhi and Prasanna

Majhi with them. Her younger brother, Lalu Majhi, followed the force as they were taking his sister away.

Andriyo Majhi's house is on the way going out of the village, and the security forces broke into his house also, gave him a beating and rifled through his belongings.

The four people taken were photographed outside the village.

The villagers very clearly informed the fact finding team that the security forces were looking for 'Sagar' and/or 'Azad' specifically in this village, and were not looking for any other person by name.

#### **VILLAGE TANGILI: ABOUT 5 A.M.**

The security forces, with the four persons picked up from Jadingi, reached Tangili, about 4 km. from Jadingi. There, they picked up Shyama Majhi, who is also Dakasa Majhi's sister's son-in-law. They were asking for one 'Hemant' in this village, but on not finding him, they took Hemant's brother and another boy, Dakua Majhi (also known as Pabitra).

The security forces seized two desi guns, and one SBML (Single Barrel Muzzle Loaded) from different houses in the two villages during these search operations. The villagers reported that it is a common practice to have country-made guns in the villages of these areas as they are used for hunting birds and small animals. The police did not try to connect these weapons to any person in the village, and have reported this as a seizure during the raid.

#### **ENROUTE IN THE JUNGLE**

The woman and some of the boys were blindfolded for a long stretch while walking in the jungle. The villagers reported that between Tangili and Baliponka, the troop also met another villager, Ravi, on the nullah. He was looking after his field and was making sounds to drive away the birds. The security forces made him also walk with them, alleging that by making sounds he was giving signals to the Maoists. While

walking he was asked to hold the seized desi guns. They left him off after a while, when his wife came looking for him, begging and pleading that he was not a Naxalite.

#### COMMENT AND OBSERVATIONS

The arrests by the forces seem to have been arbitrary, because when they did not get the people they were searching for (Azad and Sagar), they picked up anyone available, even leaving out people who were later shown as 'surrendered Maoist rebels'. Lalu Majhi who followed the force for a long distance was not considered a risk in February 2010, but later when he surrendered in March 2010, he was presented as a cadre of the (CPI-Maoist) party. Similarly, there was no specific complaint or evidence against the woman arrested.

In contravention of the law, the woman was picked up at night, without any female security personnel present. All rules for detention and arrest of women have been broken even though there was no immediate threat from her, and she was peacefully in the midst of routine chores at her residence.

Arbitrary arrests leave everyone feeling insecure. The security forces and the police are able to claim some success with these 'arrests' but this does not make a place more secure for the residents of the area.

The norms of civil life have been seriously shaken. Merely living in the area has made a person liable to be arrested. People say they have 'surrendered' because they were being 'suspected', not because they have committed any crime. Women worry about family members and extended relatives being in jail. People have to safeguard against their own arrests. Mothers are worrying incessantly for their young children. Life is thus full of tensions and problems.

The security personnel also asked two or three boys to return.

Prasanna left somewhere on the journey, but Dakua and Lalu continued, saying that they would go back only if the personnel also released the woman. They finally were forced to return to the village from Baliponka, which is very near the dam. Ahead of the dam, there is a pucca road and a vehicle would pick the raiding team from there.

From the reports of the woman and the other boys accompanying the team, it seems the SOG and police forces separated the woman from the main group and gang-raped her in the jungles, a little before boarding the police vehicle to take those picked up to their headquarters.

The woman reported that the perpetrators showed her obscene pictures on their mobiles before raping her. She believes that there were 5 or 6 people who raped her. When she protested about the pain, abusive language was used suggesting 'how would she handle a rifle's butt if she could not take in a man's penis'. The rape survivor believes that other people of the security forces were also in the vicinity and would have been aware of the incident. She added that her brothers were also present and were trying to intervene.

The two brothers who were also taken to the police station were threatened with death if they said anything, according to the woman. In reference to the identity of the rapists, she was able to describe that they were uniformed and were speaking Oriya.

The investigating team could meet only one of the four male villagers (who had been picked up by the security forces and would have been around when the incident took place). We could speak only to Lalu Majhi directly. We heard what the other male villagers had to say through other people. The boys (who were released on the way) are not clearly stating that they had seen the rape, but said that they were scared that the security forces would do something to their sister.

The sarpanch said that he had first come to know of the woman's rape through Pabitra (also known as Dakua Majhi, who had been picked up from the second village but released before reaching the thana).

The lawyer who is defending the woman, Lajar and Shyam Majhi informed us that the two boys who were also arrested were unwilling to divulge information, as they were very scared. The lawyer said that he found them unfit witnesses as they were not telling him anything clearly and were simply responding to his queries, saying that they had been repeatedly told not to divulge any information of the night to anybody. On being questioned 'what was there to hide about the night and not to be told to anyone', the arrested boys did not respond and repeatedly stated that they had been threatened with death if they revealed anything about the night's incident.

Our direct interaction with Lalu Majhi also seems to suggest that he was also not very comfortable about providing information about that night. The fear and intimidation experienced by the villagers was evident.

#### COMMENT AND OBSERVATIONS

People were being arbitrarily picked up and allowed to go back; the purpose only being to meet whatever criteria of a 'successful' raid laid down by the authorities.

There were eye-witnesses to the heinous incident, who are fearful of clearly voicing what they saw. The atmosphere of terror in the district does not make it easy for them to do so. Some of the witnesses are themselves in jail and have been threatened with murder.

If we take the case of Lalu Majhi, his sister and cousin are inside the jail with an uncertain future. One of his sisters is missing while one brother is 'wanted' for his Maoist links. He has himself 'surrendered' to avoid arrest. It has also been suggested that he was not able to do anything and had to watch his sister being raped. In addition to being traumatized, this does not leave him with any hope of justice. He is unlikely to take another risk by speaking about the atrocities of the authorities.

#### **ADDITIONAL INFORMATION**

It was separately told that Sagar was another name for Pramod Majhi, the second son of Dakasa Majhi. Pramod Majhi's parents as well as other people voluntarily provided the information that Pramod Majhi was from their village. He was studying in class 10th, in a school in Mahuda and after failing twice, asked for money from home for tuitions or to do something else. Since the family could not provide financial support, he left home (about five years ago). The family does not know where he is and he has not come back to the village, but they hear that he has joined the Maoists.

The second daughter in the family is also missing. She had gone to Hyderabad to work as a domestic help and returned after a year or so. Then she went to a missionary centre in Muniguda, in Raygada district and again returned home when the anti-Christian violence in Kandamahal spread and the said centre was attacked in 2008. But she never settled back into the village and disappeared one day. The family is not sure where she went, and they have had no news of her since then. She may have also gone to Hyderabad where she had gone earlier. She may have joined the Maoist movement, but nobody has seen or heard from her.

#### **POLICE STATION, ADAVA - FEBRUARY 12**

Eight people went to Adava that morning itself. The group consisted of the victim's parents (Dakasa Majhi and his wife) and family members of Lajar and Shyama (the other two who picked up from Jadingi and Tangili), who were accompanied by the local sarpanch, panchayat samiti members and a couple of other villagers. Five of them reached the police station by about 10 am. They were not allowed to go inside the barricaded police station. The CRPF personnel on guard at the gate did not let them in, and threatened to shoot the villagers if they came close to the police station.

The villagers waited outside the thana the whole day. By evening, the sarpanch again insisted that they wanted to meet 'Pitambar Babu', the

Officer-in-charge, but they received the same response. When he said the three picked up were innocent, he was told that 'How do you know they are not Naxals, when we have got guns from them? What evidence do you have for their innocence?' They were told that they must go away or they would be killed since it was evening. They were not told if the three were being detained at that particular police station. They came away not knowing where the three were.

A written complaint was given to the Collector on the next day, stating the innocence of the three picked up and enquiring after their whereabouts. The letter was signed by around 20 villagers and local political representatives. There was no response to this complaint.

It could not be confirmed where the three detainees were taken after they were put in a vehicle from the dam after Baliponka. It can be assumed that they were either brought to the Adava Police Station before the family members and the sarpanch reached there, or they were taken to the police camp in Parlakhemundi.

The arrest memos give the timings of the woman's arrest as 4 p.m on the 12th; the station diary noted by D.Mohapatra, who was in charge of the entire operation and was the Investigating Officer for this case, has a recording at 9 p.m. on February 12th that says 'Returned to the base with three Naxals and SOG and staff. One Single Barrel Muzzle Loading has been seized'.

#### COMMENT AND OBSERVATIONS

- Arrests have been shown at 4 p.m. for those picked up from the first village, Jadingi and 5 p.m. for Shyama Majhi, who was picked up from Tangili village. This is 12 hours after the actual pick-up. This shows that the security forces have tried to conceal the actual time of arrest. This timing has been created i) to cover up the fact that the woman was picked up at night, and ii) to show that they have been presented in court within 24 hours of being picked up.
- The family members were not given a custody memo when they were picked up from their homes in the villages.
- No information was given to the family members, even though they were waiting to get news of their children and/or husband outside the thana the whole day.
- Instead of taking the local villagers or the family members as witnesses at the time of arrest, a person unknown to the arrested has been used to sign as a witness.

#### INFORMATION FROM THE THANA

The arrest records at the Police Station showed that all the three persons have been charged under the following sections - 41S, 147, 148, 149, 435, 120-B, 121, 121A, 124-A of IPC, 25/27 of Arms Act, 3 of Prevention of Damage to Public Property Act, 17 of Criminal Amendment Act. The PS case numbers differ (43, 45, 46, etc.) but are all dated 28.12.2009, and therefore imply that the cases were all filed on the same date.

It is thus alleged that the three persons arrested were involved in the blasting of a telecom tower and the burning of four state transport buses that took place on December 28th 2009 in/near the village of Raipanka in the Mohana Block located on the Gajapati-Rayagada District Border.

However, the woman herself, all the villagers and many of the others we talked to informed us that the accused woman had not gone far from her village and had definitely never traveled this distance of about 120 km.

It was separately noted in the arrest records of the thana that one man, Babula of Gurjhuli village, has also been arrested in the same case(s) on February 16th 2010.

The villagers also mentioned a 'Babula' and said that he had been brought dressed in a uniform of the security personnel and he had identified the house of 'Hemant' in the second village. It can be assumed that Babula had been kept in illegal detention for the days between February 11th and 16th (we don't have details of when and where was he picked up from), and had been brought in to point out the houses and family members of the two main people the security forces were looking for.

As per the arrest records, the witness for all these arrests (even on differing dates) has been the same person, Mr. Rajeshwar Pujari s/o Simanchal Pujari, resident of Adava. The uniformity in the writing, same witness in all these arrests and the ink used indicates that the entries in the arrest records have been created in a fictitious manner, and could have also been done on a single day and all at the same time, instead of (as shown in the records) on differing dates.

D.Mohapatra, SI, was the officer in charge of this raid and the Investigating Officer of this case. He had already been transferred when we visited the Adava police station so we could not get his version of the incident.

It was also confirmed that the operation of February 12th was definitely a raid (and not a combing operation). Instructions for a raid come from the SP's office and have specific instructions about whom to arrest. The police officer we spoke to at the Adava police station said that this was confidential information, and he could not share the instructions given to the raid party and whether there were specific

arrest orders for the people picked up that day. According to him being cognizable cases, the raiding party did not need any arrest warrants.

Surprisingly, even when the present SI was asked what had been the grounds for arresting the woman, he first said that her brother is a prominent member of the Maoist party and moves with the senior party people of the area, and was involved in the blowing up of the tower. When it was countered that this is about her arrest, and not her brother's, he said that she has also been alleged to be involved. He agreed that she was picked up from home, and not from a place of crime.

#### COMMENT AND OBSERVATIONS

- From all evidence available it is clear that the woman was arrested not because she was caught committing a crime or because she or her family were in possession of arms or even because there was clear evidence of her involvement in a crime. There also does not seem to have been any arrest warrant in her name. Her only "crime" seems to have been that her elder brother is suspected of being a Maoist, and when the raiding party did not find him they picked her up. Other people were picked up and also sent back in an arbitrary manner. From this it seems that her being a young vulnerable woman, and therefore 'available' may have played a part in picking on her, rather than her younger brother.
- The sketchy information received about Babula also show that guidelines for arrest and detention are being flouted for men and women easily. The risk of sexual exploitation, physical torture and fake encounters of detainees is very high.

### **ON FEBRUARY 13TH 2010**

As per police records, the three arrested were taken to the court at 3 p.m. on February 13th. The woman was not asked if she needed a medical examination or legal representation. Thus, no lawyer represented her. Nor did her family know where she was. She was asked to sign a paper, but there was no discussion or question asked by the Magistrate about whether there was any ill treatment with her. (It is doubtful from her description of events if she was even physically presented in the Magistrate's court).

The R. Udayagiri jail shows her time of entry in the jail as 8:00 p.m. on February 13th.

During the medical examination on entry, she reported pain due to being hit by rifle butts. The jail pharmacist (who is actually not a pharmacist but was only in-charge since the pharmacist was on leave during the time the victim was brought to the jail) also confirmed that she had said this, and said that he had given a painkiller, and also subsequently given her other medicines.

He and the jailer added that it was common for new detainees to complain of being beaten up while in police custody. Most of the fresh inmates need medication when they are first brought to the jail. However, they (the pharmacist and jailer) treat this as a normal occurrence, and limit their responsibility to providing treatment. They do not see this as a human rights violation or a violation of law, and so do not intervene to provide justice.

The jail pharmacist did show the team the woman's medical report that was dated February 13th. The report has been filled in a cursory manner, with no details recorded. It also seemed that it had been prepared just then as it was a very fresh document (and not an 8-month-old document that had been taken out of a file). The doctor from the PHC who works as a part-time doctor for the jail had countersigned the document.

There were only two women inmates and 43 men on the date of the

fact-finding in R. Udaygiri subjail.

In the eight months of judicial custody, she has been presented in court only once on 25.6.2010.

#### COMMENT AND OBSERVATIONS

- The woman was given practically no opportunity or conducive situation to reveal to magistrate or jail authorities that she had been raped or even ill treated.
- Although it is mandatory that under-trial prisoners should be presented in the court once every 15 days, she has been presented in the court only once during the entire period of over seven months of judicial custody till the petition on the rape case was filed.

## FILING THE PETITION

### FEBRUARY 18TH

The lawyer met her in jail on February 18th for the first time. She was completely silent that day. Even on his next meeting, two weeks later, he couldn't get her to talk to him. He was able to file the Vakalatnama on behalf of the accused in court only on May 31st; her bail application was rejected on the grounds of the nature of charges filed.

### FILING THE PETITION

The family members could not locate the three of them [the woman and her brother from Village Jadingi and another male relative from Village Tangili], until about a month later, in late March. They got to know about their whereabouts through people of a neighbouring village who had gone to the jail to meet someone and had found out that these three people were also in R.Udayagiri jail.

The woman, in her first meeting with her parents, told them about the

rape by the security personnel that had taken place the day she was picked up. Subsequently, her father met the lawyer and told him.

The lawyer restated the gravity of the situation, and wanted to be sure if they wanted to initiate a case. Dakasa Majhi brought up the issue to his daughter in different visits, fearing the repercussions of such a case. He says she got upset saying 'how many times should I tell you how and what has happened.'

They were also worried about her marriage prospects. She was scheduled to marry in May, and they were hoping that she would come out of the jail before that. Before taking up the case, they had to discuss if her fiancé would accept her if they filed the case.

It was thus only in August that they first wrote to the Chief Minister, State Human Rights Commission, and State Women's Commission on the incident of rape. On August 18th, a petition to enquire into the crime and punish the culprits was filed in the Court of the Judicial Magistrate First Class, R.Udayagiri. And on September 18th, the testimonies of the petitioner, Dakasa Majhi, and his daughter were recorded.

#### COMMENT AND OBSERVATIONS

- An FIR against the accused people was not filed even a month and a half after the incident came to light in August, when the first petition was filed, and the rape survivor spoke to the media.
- The SP is fully aware of the incident. But he says that he need not do anything as the family did not approach him directly. As the Officer responsible for law and order in the district, he should have suo motu taken cognizance of the incident, and taken steps pro-actively. But even now, he says he would not do anything unless the Court orders him to.

### **INCIDENT IN THE JAIL**

It had been reported through local people that there was some kind of molestation of the woman inside the jail too. But when the fact finding team asked her about it, she said she was alright in the jail. As the meeting of the fact finding team took place in the presence of the jailer, jail pharmacist and another jail warder, she may not have been comfortable to talk about it in front of them. The jailer also immediately intervened and said no such thing had happened.

Bimbadhara Nayak also known as Bheema (a local Panchayat Samiti member) told the team that he was in the jail between June 5th and June 28th. When he was there, he had heard through other male inmates about an incident of molestation of the woman detainee by a warder. The men had decided to beat up the warder one night, but the man somehow got to know of it and he stopped coming on duty from that day onwards.

It was confirmed from jail records, that the concerned jail warder had actually been transferred from this jail on July 16th. While the jailer insisted it was a general transfer as he had been in this jail for several years, it was also revealed that he had been suspended over another matter in his next place of duty.

### **IMPACT ON THE INDIVIDUALS AND THE FAMILY**

It was reported that Lajar Majhi s/o Sarasa Majhi was actually studying in Class 9 in the tribal hostel in Kotamma. This needs to be verified and would help in confirming that the boy is actually a juvenile. In the village also his family reported that he was younger than his sister, who is about 20 years old. Therefore, he cannot possibly be 23 years as shown in the arrest records.

Putting him in jail for this indefinite period has severely affected his education.

Shyama Majhi's child of six months died in the interim, because of the stress on his wife and her inability to feed the child properly.

The raped woman is also scared of how her fiancé would treat her in their marriage. She is very worried that even if he accepts her, he could insult her all her life because of the rape.

## **VIOLENCE, COUNTER VIOLENCE AND THE CITIZENRY**

### **'SURRENDERS' AND INCREASED VULNERABILITY**

In March 2010, 18 men (suspected Maoist rebels) have officially 'surrendered' in the area. Some of the surrendered people the team met said that the police (unofficially) communicated to them through local leaders about the cases filed against them. They had been informed that the police could arrest them at any time. They were scared. Under the leadership of the local Sarpanch and in consultation with the community they decided that it would be safer to 'surrender', rather than be either killed in fake encounters or be arrested with no recourse to justice. This 'surrender' works as a protection for them against future actions by the police in an area where everybody has different kinds of cases being slapped on them on the basis of CrPC Section 161-statements.

Some local people in turn complain of coming under pressure from the Maoists for organizing this surrender. They were taken by an armed squad to an unknown place and were threatened by them with death if they continued with such "compromising" actions.

### **RETALIATION**

We were told that two village guards had been killed by the Maoists in May 2010; the note left by the Maoists said that this was revenge for providing information to the police leading to the kidnapping and rape of the woman from Jadingi. The two persons were tied together and killed.

There was no time to corroborate this news with more villagers. But we later found that this had been reported in local newspapers. The

Home Guards had been identified as Dinabandhu Mantri and Sadananda Singh. The press reports stated that the letter claimed the Maoists' involvement in killing of the two Home guards, and ordered villagers to quit their jobs as home guards, as village guards and as special police officers.

### **LOCAL PRESSURE**

The Sarpanch said that he could not continue supporting the family in the forefront, because he feared for his own security. There were cases already filed against him, and after this incident in February, more criminal cases were filed against him.

The lawyer said that he was also being indirectly threatened. His wife is a government school teacher, and a case has been filed against her on the pretext of electricity theft. It took a lot of effort to get her anticipatory bail. He has heard that the SP publicly saying that he should be fixed in some serious cases, as he is continuously taking up the cases of people arrested in Naxalite activities.

The villagers have gone to the SP and the Collector to register their complaints against the harassment of many people and arrests of many who were not involved in the Naxal activities. The clear message given from these officials has been that there will be no sympathy for people alleged to be involved in Naxal activities, and no one who stands up for them will be spared even if it were innocent people being accused to be Naxalites.

## **ISSUES EMERGING**

### *PEOPLE IN THESE AREAS ARE BEING PICKED UP CONTINUOUSLY*

The fact finding team found that there were many people who have been detained for allegedly Naxal activities. There would be a very small proportion of people in the whole area who would not have directly been embroiled in some case, or whose family member would not have been accused. There are people continuously being harassed by security forces, and timely interventions by a mass of villagers is

the only way by which they would have been able to save themselves. This case also points out the randomness in picking-up people and the complete failure of legal procedures to protect innocent people from this kind of harassment.

*ABSENCE OF PROCEDURES OF JUVENILE JUSTICE ACT AT TIMES OF PICK-UP OF JUVENILES*

Along with the adults, there are many juveniles that are being picked up in these areas, and being presented as hardcore naxalites. These adolescents are undergoing similar torture and provisions within the Juvenile Justice Board have not been followed at the times of arrest, detention or jail remand. The children arrested are commonly presented as over-age in order to bypass the law.

*SAFETY OF WOMEN PRISONERS*

Guidelines for arrest of women are being clearly flouted, with arrest or detention happening before sunrise, absence of women constables, not providing an arrest memo and not bringing a witness from the family at the time of the arrest. There is also no procedure for proper medical examination of the arrested before they meet the magistrate or of questioning by the magistrate to ensure that the accused has not been subjected to torture or sexual assault.

*DISREGARD OF A TRIBAL WOMAN IN THE EYES OF THE ADMINISTRATION AND SENIOR POLICE*

There has been no response on this case from the senior officials in the administration and police. The incident does not seem to have perturbed anybody. Further, the message that the security forces are putting their lives in peril given the threat they feel from the Maoists and are above such incidents of sexual violence was put forth.

The fact that the SP and the administration have not taken any action on the incident shows that there is little regard for the plight of a marginalized adivasi woman. The custodial gang rape of an adivasi woman is a serious issue and it warranted that the SP took immediate action to at least institute an investigation and file FIR based on the

complaint filed by the woman. Failing to do so, on the grounds that he was not directly approached by the family of the woman, shows a complete disregard of the concerns of the tribal woman, and the thought that the tribal woman does not have any identity and personhood to be considered.

For the marginalized communities in these areas, the image of the police and security forces is definitely not of a 'saviour' or 'protector', rather it is that of one to be feared.

#### *RESPONSIBILITY OF JAIL AUTHORITIES*

Callousness permeates the perception of jail authorities towards custodial violence. Incidents of sexual assault in custody would come out in the open more promptly if protection mechanisms were put in place at the jail. The woman in question had no one speak to her in an assuring or sensitive manner in judicial custody.

The rule that a police detainee should be produced in court within 24 hours, and a jail remanded person at least once in 15 days is an opportunity for people to voice their complaints. This rule was not followed, giving little opportunity for the rape to become known.

The onus of 'complaining' and finding the courage to do so falls on the persecuted herself, whereas the system is neither taking notice nor any stance on the ills within it. The jailer jail assistant, and pharmacist were nonchalant about the physical abuse of under-trials by the police, and felt they didn't need to stick their head out in these cases; they were clear that their job is 'medical treatment; and not 'justice or prevention'.

#### *INTIMIDATING THE WOMAN, WITNESSES AND OTHER PEOPLE*

A sense of fear and the fact that it is always a risk to complain against the police and jail authorities is strongly affecting the course of the case in question. The woman could not speak about the incident of sexual harassment in the jail- to either elaborate on it or discuss how it had come up in the petition and why other people had brought it up -

but had to simply deny its occurrence and not open up a discussion on anything of this nature.

Her brothers and other possible witnesses to the incident of rape have their lives at stake, and are therefore not speaking up. The lawyer also senses that he is likely to be trapped in some serious allegation because of his relentless stand of defending the villagers accused as Naxals in court. After supporting this woman, the Sarpanch and Panchayat Samiti members are also being harassed, and have consciously withdrawn from being identified with the family in the police circles.

*INSECURITY OF WOMEN IN THE VILLAGES*

There is a threat on the security and life of women with the onslaught of combing operations and raids in the interior villages of the forests. These forces have become a threat to the ways of existence and survival of the people in their own traditional lands.

Several incidents of women being picked up, beaten and/or sexually assaulted came up in the discussions. It was not possible for this fact-finding team to further explore these links in this trip, but it did give an idea that there have been other such assaults on women in the area, with no response from the administration.

*NEED TO HAVE DIFFERENT PROVISIONS FOR PROVING CUSTODIAL VIOLENCE IN 'SENSITIVE' AREAS*

It is not easy for women in custody to report violence faced by them from those in power. The environment in these sensitive areas compounds the situation, and women are only able to bring their complaints with a lot of fear for themselves and their families.

It is also difficult to go back for justice to the same agency that has been the perpetrator. In this case, the accused were part of the forces at Adava P.S.; there was an insensitive response even from the SP for the mere reason that the person had been arrested under charges of Naxal activities, leaving the family with little hope of justice from here.

It is unlikely to find corroborative evidence - either eye-witnesses or a medical examination. The eye-witnesses are either part of the forces who have committed the crime, or are the ones who are being picked up and repressed in the name of curbing Maoist violence. Therefore, to expect 'evidence' in these areas is difficult.

Legally, the incident of rape does not have to take place only inside the thana premises to be considered a 'custodial rape' because the entire region becomes a place of consciously exerting state control and power. The woman in question was enroute and in direct custody of the police and security forces, and therefore the responsibility of the state.

*UNDER-TRIALS IN GENERAL AND IN MAOIST CASES*

Undertrials continue to languish in jails for extended time-periods. The trials are very slow, with no evidence against the people, besides statement under Section 161, which is often forced. Also, under-trials are not brought in the court, and many formalities are not followed.

In the case of so-called Maoist under-trials, the impression that we got was that the situation was even worse. People in Maoist cases are picked up and presented in court usually on weekends or in the evening or night hours, and they don't get a chance to meet the Magistrate, as the papers are signed in private spaces and not the courtrooms. This is an issue that needs to be further understood.

## DEMANDS

1. **Conduct an Independent Inquiry** - Section 176 (1)A of the Criminal Procedure Code mandates that it is compulsory to conduct a judicial enquiry when rape is alleged to have been committed in custody; this should be immediately initiated by the state.
2. **Initiate criminal proceedings against the entire team who raided village Jadingi and Tangili on February 12, 2010** - Criminal proceedings (suspension and filing of charges) should be immediately initiated against the police and SOG personnel who were part of the raid team for committing the heinous crime of rape and/or protecting the perpetrators.
3. **Arrest of the main accused** - The main perpetrators of the crime of rape should be identified and arrested immediately. It has already been over five months to the day that the crime came out in the open, but no arrests, not even charges have been filed yet. The Supreme Court has laid down that the testimony of the rape survivor is paramount and is adequate evidence. According to the amendments after the Mathura case, the burden of proof is on the accused in cases of gang rape and custodial rape, and there should have been no reason to not arrest the accused.
4. **Release on bail** - People are being arrested with minimal grounds and incarcerated for years. Their involvement in the alleged crimes is nil or negligible. Therefore, the prevalent practice of not giving people bail should be changed. They have been prosecuted in the bus blast incident of December 2009. All three arrested, including the rape survivor, in this incident seem to have been picked up without clear evidence of their involvement.
5. **Women in conflict areas are much more vulnerable to sexual violence and we demand a serious response from the district and state administration when a woman shows the courage to make such a serious complaint.** Several more instances of sexual assault on the adivasi women in the villages had come up, but

they have not been able to be reported. There is little for people to believe that justice would come their way, and the rape survivor and her family only get further terrorized by the people in authority. The administration should, by rule, take cognizance of such complaints, whether they come directly or through media or any other source. As of now, the stance is to wait for it to die out on its own or create an atmosphere for it to be dissolved. This has been seen in Chhattisgarh and other areas clearly, and the stance of the Gajapati administration has also been the same.

6. **There must be strict adherence to the procedures and safeguards for protecting women in custody** - The procedures for arrest brought in for safeguarding women detainees are being flouted easily because there are no women in the raid teams and combing parties in these areas. Also, they adopt the procedure of showing the arrest at a later time, and they show detention until the official arrest is made in the presence of women constables. This clearly leaves the woman vulnerable to the men in uniforms. Subsequent procedures for bringing the incidents of violation in light are not followed in spirit, and the woman does not have the space or security to disclose the incidents at the first opportunity.

7. **Damages and reparation for the rape survivor** - It is the government responsibility to protect the rights of women; the responsibility grows manifold when the woman is in their custody. Considering the gravity of the crime, the rape survivor has a right to reparation. While it is not possible to financially compensate for pain and suffering caused, it is the duty of the state to work out the damages on her person and pay for it. Without any bureaucratic delays, the reparation should be given.

## **FACT-FINDING TEAM MEMBERS**

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## PRESS CLIPPINGS

The Hindu

Date: 14/02/2010 URL: <http://www.thehindu.com/2010/02/14/stories/2010021451670300.htm>

Woman among 3 Maoists held

Staff Reporter

*They have been nabbed during combing operation in Adaba area*

BERHAMPUR: Three hardcore Maoists, including a woman cadre, were arrested along with arms in Gajapati district on Friday night.

They were nabbed during combing operation in Adaba police station area. Adaba happens to be one of the major naxal-infested areas in the district.

The arrested Maoists were -- Lazar Majhi (23) and woman cadre Arati Majhi (19) from Jadingi village, Shyama Majhi (25) of Tangili village. Police expect to draw out some vital information from them as Lazar and Arati happen to be relatives of Pramod Majhi alias Sagar, who is an area commander of the Basadara Dalam of the banned CPI (Maoist) party. The Basadara Dalam which is active in Gajapati and Rayagada districts of south Orissa is personally led by the top Maoist leader of Orissa, Sabyasachi Panda.

Guns seized

Arati was Pramod's sister while Lazar was his cousin. The arrested trio was gun-bearing cadre of the naxal movement. Three SBML guns were seized from their possession. Lazar was involved in the naxal attack on Nayagarh town in 2008, attack on a police vehicle near Andhari Ghat in February 2009, blasting of Paniganda forest beat house and Katingia police outpost.

He was also involved in attack on Dangasorada police outpost in Rayagada district. Shyama and Arati were involved in blasting of Paniganda forest beat house. All the three had terrorized hundreds of

innocent passengers on December 28 night near Raipanka. They were part of the armed naxal group that burnt down four Orissa State Road Transport Corporation (OSRTC) buses at dead of night leaving the passengers including women and children to suffer in cold.

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Video clipping available at: <http://vsitram.com/media/Gajapti/>

### **Orissa Police Arrests Three Maoists From State S Gajapti District**

Orissa, February 15 (ANI): Orissa Police on Saturday arrested three Maoists including a woman rebel in Gajapati district of the state. The arrested rebels have been identified as Lagan Majhi alias Murali, Sham Majhi alias Shyam and Arati Majhi, who have been involved in a number of attacks.

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### **16 Maoists surrender in Gajapati District in Orissa**

News clipping available at: <http://www.breakingnewsonline.net/odisha/1224-16-maoists-surrender-in-gajapati-district-in-orissa.html>

Written by Breaking News Online Team

Sunday, 14 March 2010 11:49

Bhubaneswar: Breaking News! The Orissa Police received a major boost in its anti-naxal operation, as 16 Maoist rebels surrendered before the police on Saturday. The surrendered Maoists were involved in several attacks on forest offices in Gajapati district in Orissa.

The naxals were from seven villages of Adaba area of Gajapati. They laid down their arms before district SP Sanjib Arora. They were in the age group of 18 - 35 and said that they were being harassed by their senior colleagues.

The Maoists were given Olive fatigues to wear. They addressed a

press meet and expressed their desire to join the mainstream, by giving up violence. They were said to be involved in several attacks, including torching of four OSRTC buses at Raipanka in December 2009.

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### **16 Maoist rebels surrender before the police in Orissa**

Video clipping available at [http://wn.com/2010\\_gajapati\\_surrender](http://wn.com/2010_gajapati_surrender)

Gajapati, March 14 (ANI): The surrender policy known as Ghara Bahuda propagated by Orissa government got a major boost when sixteen Maoists surrendered before the state police in Gajapati district on Sunday. According to Sanjeev Arora, Superintendent of Police, Gajapati, the surrendered were lured by the Maoists and were told that they would be working for the benefit of the tribals, but later they got disillusioned and wanted to return back to the mainstream.

Sexual Assault of an Adivasi Woman by Orissa Security Personnel  
in Gajapati District

- A Fact Finding Report by  
Women Against Sexual Violence and State Repression

**DEMANDS**

- Conduct an Independent Inquiry;
- Initiate criminal proceedings against the entire team who raided village Jadingi and Tangili on February 12th 2010;
- Arrest the main accused - the main perpetrators of the crime of rape should be identified and arrested immediately;
- Release on bail - all three arrested, including the rape survivor, in this incident seem to have been picked up without clear evidence of their involvement;
- Women in conflict areas are much more vulnerable to sexual violence and we demand a serious response from the administration when a woman shows the courage to make such a serious complaint. The administration should, by rule, take cognizance of such complaints;
- Strict adherence to the procedures and safeguards for protecting women in custody;
- Damages and reparation for the rape survivor.